

REMARKS

Claims 3, 4, 6 and 23-29 are now pending in the application. The allowability of Claim 23 has been removed. Claim 23 has been amended to more clearly define the claimed subject matter. The basis for these amendments can be found throughout the specification, claims and drawings.

The preceding amendments and the following remarks are believed to be fully responsive to the outstanding Office Action and are believed to place the application in condition for allowance. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

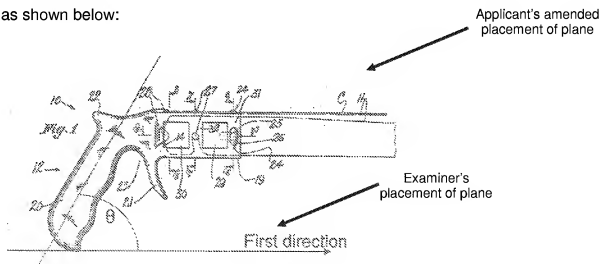
FINAL REJECTION

The Examiner has chosen to make the present Office Action final, stating that the Applicant has received an Office Action with respect to Claim 23 before it was amended on March 7, 2007 (it is assumed that the Examiner is referring to the amendment filed on May 11, 2007 in response to the Office Action mailed on March 7, 2007). However, "under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement..." *M.P.E.P. § 706.07(a)*. The Applicant respectfully requests that the Examiner reconsider the final rejection because it is believed to be premature.

At the outset, *M.P.E.P. § 706.07* explains that grounds for rejection must "be clearly developed to such an extent that applicant may readily judge the advisability of an appeal

unless a single previous Office Action contains a complete statement supporting the rejection.” The Examiner states that the grounds for rejection are “a different interpretation” of art of record that has been previously overcome. Therefore, no single previous Office Action contains a complete statement supporting this rejection. As the “different interpretation” of the art of record and the new grounds for rejection have not yet been completely developed, it is not clear to the Applicant at this juncture whether an appeal would be advisable.

Further, the Applicant believes that the amendment made on May 11, 2007 did not introduce or necessitate a new ground of rejection or alternatively, the amendment overcame the Examiner's new grounds for rejection. On May 11, 2007, the Applicant modified the pertinent language in Claim 23 to read, “wherein said inner surface of said hand grip portion is sloped toward said blade so as to be oriented at an acute angle relative to said ~~first direction~~ second blade mounting portion”. This amendment was made to overcome the former Examiner's placement of a plane below the hand grip portion, as shown below:



The former Examiner's earlier rejection and the Applicant's amendment were both directed to *the angular relationship between the handle and the blade*. The former Examiner

reviewed the amendment and remarks and found them persuasive (SEE Office Action dated July 17, 2007). The former Examiner allowed Claim 23 and Applicant amended the remaining claims to depend from allowable Claim 23. The Examiner is now citing *the angular relationship between the handle and the blade* as grounds for rejection. This is clearly not new subject matter. The rejection now levied was contemplated by the former Examiner and overcome by the Applicant.

It is also important to note that before the amendment, the former Examiner's placement of the plane could have been placed in the upper location as currently cited by the Examiner. The amendment made by the Applicant *narrowed* the placement of the plane of Claim 23 to the location of the blade, as shown above. The narrowing of Claim 23 did not necessitate new grounds for rejection, as the former Examiner could and did place a plane to achieve the acutely angled orientation between the handle and the blade.

Finally, the Applicant notes that the Examiner has included a new reference, Suhre (U.S. Pat. No. 2,559,686), in the final rejection. As one of the §102(b) rejections is not based on information submitted in a previous information disclosure statement, a final rejection is improper at this juncture. For this reason and those preceding, Applicant submits that the Final rejection is premature and request withdrawal under *M.P.E.P.* §706.07(c).

REJECTION OF PREVIOUSLY ALLOWED CLAIMS

The Examiner has removed the allowance of Claim 23 based on a different interpretation of the previously cited Davey (U.S. Pat. No. 2,017,895) reference. The *M.P.E.P.* §706.04 states that “[g]reat care should be exercised in authorizing such a

rejection." See *Ex parte Grier*, 1923 C.D. 27, 309 O.G. 223 (Comm'r Pat. 1923); *Ex parte Hay*, 1909 C.D. 18, 139 O.G. 197 (Comm'r Pat. 1909). Further, under *M.P.E.P. §706.04 Previous Action by Different Examiner*, "[f]ull faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something." *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 126 F. Supp. 2d 69, 139, 57 USPQ2d 1449, 1499-50 (D. Mass. 2001).

It is not understood if the Examiner believes that the former Examiner has made a clear error in the preceding Office Action with respect to the Davey reference. As previously discussed, the former Examiner used the Davey reference with regard to *the angular relationship between the handle and the blade*. The Examiner is now citing *the angular relationship between the handle and the blade* as grounds for rejection. The Applicant respectfully requests that the Examiner reconsider the rejection of previously allowed Claim 23 or in the alternative provide additional information as to the former Examiner's error in the allowance of Claim 23 that necessitated a new approach and a new search.

REJECTION UNDER 35 U.S.C. § 102

Claims 3, 6 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Davey (U.S. Pat. No. 2,017,895). Claims 3, 6 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Suhre (U.S. Pat. No. 2,559,686). These rejections are respectfully traversed.

The Examiner, in rejecting currently amended Claim 23, relies on the trigger portion 21 of the Davey blade holding means 12 to overcome the angular relationship between the blade and the handle in the present application. A handle, as defined by the *Merriam-Webster Dictionary*, is a part that is designed especially to be grasped by the hand. The Davey reference clearly differentiates between the operator's 'hand' and 'finger' by stating that "when the [operator's hand] grips the handle 20, the index finger may encircle the portion 21..." See Page 1, Column 2, Lines 18-20. It is clear that the Davey reference does not intend the 'hand' to encircle the trigger portion 21, only the 'finger'. Applicant's amended Claim 23 requires that "a hand grip portion adapted to be received in a user's palm." Since the trigger portion 21 is not adapted to be received in a user's palm, it does not anticipate the invention as described in amended Claim 23.

The Examiner also looks to Suhre in rejecting Applicant's Claim 23. However in articulating this rejection, the Examiner omits a portion of Applicant's claim language (i.e. "wherein said first and second blade mounting portions each include a key adapted to be received in an end slot in said blade"). It is noted that the Suhre reference does not teach a key adapted to be received in an end slot in the blade as described in Claim 23. Applicant further notes that claim 23 has been amended to include the limitation of "a blade...extending in a first direction away from said handle, wherein said blade has

an unsupported distal end". The hack saw frame of the Suhre reference encompasses the blade 56 at end 28 and end 46 supporting at both distal and proximate ends, as shown in Figure 1. Therefore, the Suhre reference does not anticipate the invention as described in amended Claim 23.

Furthermore, Claims 3 and 6 depend from Claim 23 and should also be patentable for at least the same reasons as noted above. Additionally, the Suhre reference is a joined piece requiring multiple interworking parts (handle 10, frame 24, sliding block 32, guide and pin 36) to keep the blade fastened, as opposed to the "single, integrally formed member" as described in Claim 3. See Page 1, Column 1, Line 51 – Column 2, Line 9. The Suhre reference also does not contemplate or discuss a hook member for hanging said hand saw as described in Claim 6. When a reference shows or describes inventions other than those claimed by the Applicant, the particular part relied on must be designated as nearly as practicable. *37 C.F.R. 1.104*. Applicants respectfully request reconsideration and withdrawal of these rejections or further elaboration as to the particular part of the reference that the Examiner is considering when making the rejection.

REJECTION UNDER 35 U.S.C. § 103

Claims 4 and 24-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Davey (U.S. Pat. No. 2,017,895) in view of Applicant's Admitted Prior Art (hereinafter, AAPA). This rejection is respectfully rendered moot.

Claims 4 and 24-29 depend from independent Claims 23 and, therefore, for at least the reasons noted above, should also be patentable. Applicants respectfully request reconsideration and withdrawal of these rejections.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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